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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Grange Insurance Association

Serial No. 76272754

Faye L. Tomlinson of Christensen O'Connor Johnson Kindness
for Grange Insurance Association.

Eugenia K. Martin, Trademark Examining Attorney, Law Office
114 (K. Margaret Le, Managing Attorney).

Before Hohein, Hairston and Bucher, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application has been filed by Grange Insurance
Association to register the mark "THE DAWNING OF A NEW
GRANGE GRANGE INSURANCE GROUP" for "property and casualty
insurance underwriting services."¹

The Trademark Examining Attorney has refused
registration under Section 2(d) of the Trademark Act, 15

¹ Serial No. 76272754, filed June 18, 2001, alleging first use
anywhere and first use in commerce in April 2001. The term
INSURANCE GROUP is disclaimed apart from the mark as shown.

U.S.C. §1052(d), on the ground that applicant's mark, when used in connection with the identified services, so resembles the previously registered marks, shown below, as to be likely to cause confusion:



Registration No. 1,535,724 issued April 18, 1989; Section 8 affidavit accepted; Section 15 affidavit received. The registration is for "insurance underwriting services, namely, property, casualty, life, accident, and health underwriting services." The word "INSURANCE" is disclaimed apart from the mark as shown.



Registration No. 1,604,932 issued July 3, 1990; renewed. The registration is for "life insurance underwriting services." The words LIFE INSURANCE are disclaimed apart from the mark as shown.



Registration No. 1,663,622 issued November 5, 1991; renewed. The registration is for "insurance underwriting services in the field of property, casualty, life, accident and health." The word INSURANCE is disclaimed apart from the mark as shown.



Registration No. 1,636,326 issued February 26, 1991; renewed. The registration is for "life insurance underwriting services." The words LIFE INSURANCE are disclaimed apart from the mark as shown.²

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs on the case. An oral hearing was not requested.

² Registration Nos. 1,535,724 and 1,663,622 are owned by Grange Mutual Casualty Company; and Registration Nos. 1,604,932 and 1,636,326 are owned by Grange Life Insurance Company. It appears that the companies are related since PTO records show that they have the same address.

In determining whether there is a likelihood of confusion between two marks, we must consider all relevant factors as set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis under Section 2(d), two of the most important considerations are the similarities or dissimilarities between the marks and the similarities or dissimilarities between the services. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

Turning first to the services, applicant does not dispute that its services (property and casualty insurance underwriting services) and the services in the cited registrations (property, casualty, life, accident, and health insurance underwriting services) are identical and otherwise closely related. Thus, if the same or substantially similar marks are used in connection with these services, confusion as to source or sponsorship is likely to occur.

We turn our attention then to the marks. It is the Examining Attorney's position that the dominant portion of applicant's mark and each of the cited marks is the term GRANGE and because the marks share this term, they are very similar.

Applicant, in urging reversal of the refusal to register, argues that:

In view of the highly descriptive nature of the term "Insurance," the fact that as a licensee of the National Grange, Appellant has a right to use the term "Grange" in its trademark and because the remaining portions of applicant's and registrant's marks are not confusingly similar, Appellant respectfully submits that Registrant's marks should not be a bar to registration of Appellant's mark.

(February 8, 2002 Response, p. 2).

Applicant has made of record an excerpt from the American Heritage College Dictionary, (Third Edition) wherein the word "**grange**" is defined as "an association of farmers founded in the United States in 1867." Also, applicant has submitted a copy of a license agreement between it and an entity named The National Grange of The Order of Patrons of Husbandry (National Grange). The agreement provides in pertinent part that:

NATIONAL GRANGE hereby agrees to [Grange Insurance Association's] use of the name "Grange" which is recognized by [Grange Insurance Association] as a registered trademark of NATIONAL GRANGE.

Finally, applicant argues that there has been a long period of contemporaneous use without any actual confusion having occurred between applicant's mark and the cited marks.

In this case, we agree with the Examining Attorney that when applicant's mark and the cited marks are each

considered as a whole, they are highly similar in commercial impression since the dominant literal and source-identifying element of each mark is the term GRANGE. While applicant's and registrant's marks must be considered in their entireties, including any disclaimed or otherwise descriptive matter, since that is how the marks appear when they are used in the marketplace, it is nevertheless appropriate for rational reasons to regard certain features of the marks as being more dominant or otherwise significant, and therefore to give those features greater force and effect. Disclaimed or otherwise descriptive matter is generally viewed as a less dominant or significant feature of a mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751-52 (Fed. Cir. 1985).

Applying such principles to the marks at issue in this case, it is clear that the term GRANGE is the dominant literal and source-identifying element in each of the respective marks. The disclaimed term INSURANCE GROUP in applicant's mark is the generic name for applicant's services and, as such, has little impact on the overall commercial impression created by the mark THE DAWNING OF A NEW GRANGE GRANGE INSURANCE GROUP.

Similarly, the disclaimed words INSURANCE and LIFE INSURANCE are the generic names for registrants' respective services and, as such, have little impact on the overall commercial impression created by registrants' marks. Also, the flag design in each of registrants' marks and the phrase YOUR PARTNER IN PROTECTION in two of the marks are subordinate matter. Again, it is the term GRANGE which dominates each of registrants' marks and primarily creates the commercial impression generated by each of them. Thus, each of the cited marks is highly similar in commercial impression to applicant's mark.

With respect to applicant's contention that it has a right to register its mark in view of the licensing agreement, as noted by the Examining Attorney, this agreement is between applicant and a third party. Moreover, the agreement provides only that applicant may use the name Grange. This is different from a consent wherein a registrant consents to registration of an applicant's mark. While a consent between applicant and the owners of the cited registrations would be entitled to weight in our likelihood of confusion determination, the licensing agreement between applicant and a third party has no bearing on our determination.

Further, according to applicant, there have been no instances of actual confusion between applicant's mark and the marks in the cited registrations. However, there is no evidence of applicant's and registrants' geographic areas of sales, or the amount of sales under the respective marks. Further, there is no information from the registrants. In any event, the test is likelihood of confusion, not actual confusion. See *Weiss Associates Inc. v. HRL Associates Inc.*, 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990); and *In re Kangaroos U.S.A.*, 223 USPQ 1025 (TTAB 1984).

We conclude that purchasers and prospective consumers familiar with each of the registrants' GRANGE INSURANCE/LIFE INSURANCE (YOUR PARTNER IN PROTECTION) and design marks for property, casualty, life, accident, and health insurance underwriting services, would be likely to believe, upon encountering applicant's substantially similar mark THE DAWNING OF A NEW GRANGE GRANGE INSURANCE GROUP for property and casualty insurance underwriting services, that the respective services emanate from or associated with or sponsored by the same source.

Decision: The refusal to register under Section 2(d) is affirmed.